Supreme Court, U.S.
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No. 96-1609

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

ARTHUR A. LABOUR,

Petitioner,

vs.

AMERICAN STATES INSURANCE COMPANY
and ROYAL INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should this Court grant certiorari where the only issue is whether the Court of Appeals correctly applied state law in its consideration of an insurance coverage dispute?

2. Should this Court grant certiorari where the decision of the Court of Appeals is consistent with its prior decisions interpreting California law and has neither departed from the accepted and usual course of judicial proceedings nor sanctioned such a departure by a lower court?

3. Is a significant issue of public policy involved so as to justify the granting of certiorari where the question involves the interpretation of an insurance contract under state law?

STATEMENT PURSUANT TO RULE 29.6

Respondent American States Insurance Company is a wholly-owned subsidiary of Lincoln National Corporation. American States Insurance Company has no subsidiaries.

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ON PETITION FOR WRIT OF CERTIORARI
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FOR THE NINTH CIRCUIT

RESPONDENT AMERICAN STATES INSURANCE COMPANY'S BRIEF IN OPPOSITION

Respondent American States Insurance Company ("American States") respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

JURISDICTION

American States concurs with petitioner's asserted basis for jurisdiction pursuant to 28 U.S.C. § 1254(1). However, pursuant to Rule 10 of the Rules of the Supreme Court, American States contends this court is without jurisdiction to entertain this petition because no issue set forth in the petition falls within the parameters of the reasons described in Rule 10 for granting certiorari.

STATUTORY PROVISIONS INVOLVED

The following statutory provisions are involved: 28 U.S.C. § 1332; 28 U.S.C. § 1254(1); Supreme Court Rule 10. The entire text of Supreme Court Rule 10 is reproduced in the Appendix attached hereto.

COUNTERSTATEMENT OF THE CASE

A. Nature of the Case

On April 5, 1993, American States filed this insurance coverage action governed by California law against two insureds seeking a declaration that it had no obligation to defend or indemnify the insureds under certain comprehensive general liability policies issued by American States for potential or actual liability for clean-up costs resulting from the contamination of soil below a former metal electroplating facility located in Sacramento, California. Insured Arthur A. Labour ("Labour") is the present owner of the property on which the industrial electroplating facility was located. The other insured,

Richard Perry, owned and operated the facility as Sacramento Plating, Inc. ("Sacramento Plating") for a period of 25 years.

Labour sought a defense from American States after the California Environmental Protection Agency Department of Toxic Substances Control ("CAL-EPA") issued an Imminent and Substantial Endangerment Determination and Order ("Order") to Labour on April 22, 1992.

Based on the findings made in the CAL-EPA Order, discovery conducted in the action brought by American States and undisputed evidence developed in the coverage action, it was determined that chemicals were dripped and splashed over the cement floor of the electroplating facility on a day-to-day basis throughout the 25 years that operations were conducted at the facility. In addition, because of the constant dripping and splashing, the facility was specifically designed with a slanted floor, a system of drains and a cinder block "berm" at its north and sound ends to act as a holding pond in the event that any of the chemical tanks overflowed or leaked their contents, in which case any toxic chemicals released would be directed through the drain system and sewer pipes. The three spills described by Labour occurred in the area of the berm just as expected.

B. Proceedings And Disposition Below

1. *The District Court*

Invoking the Court's diversity jurisdiction, American States filed a declaratory judgment action pursuant to 28 U.S.C. § 2201 on April 5, 1993. On

November 5, 1993, Labour filed a motion asking the Court to abstain from exercising jurisdiction over the district court action. After careful consideration of the jurisdictional issue, the district court filed a memorandum and order on February 8, 1994 setting forth various reasons for the conclusion that jurisdiction over American States' declaratory judgment action was appropriate.

On August 15, 1994, American States filed a motion for summary judgment seeking an adjudication that the pollution exclusion in each of the policies it issued to Labour and Perry barred coverage as a matter of law. The pollution exclusion in each American States policy at issue is a "sudden and accidental" pollution exclusion which bars coverage for environmental pollution unless the property damage resulting from such pollution has been caused by the sudden and accidental discharge, dispersal, release or escape of contaminants or pollutants, as specified in the language of the exclusion.

The district court specifically held that there was no evidence that the three spill incidents identified by the insureds -- as opposed to the commonplace splashing, spilling, and dripping of toxic liquid onto the concrete floor -- caused the contamination. Further, even if the three spill incidents did cause some soil contamination, the district court held that the incidents were only part of the contamination caused by pollution occurring in the regular course of plating operations.

In addition, the district court held that the contamination at the Sacramento Plating facility was not "accidental" as also required under the exception to the pollution exclusion. Based upon statements made by

Richard Perry, the operator of Sacramento Plating, and the uncontroverted factual record filed in support of the motion for summary judgment, the district court determined that the leaks or spills which occurred at the facility, although not intended, were certainly not unexpected because the facility was designed to accommodate large spills of toxic liquid onto the floor of the facility.

Finally, the district court decided that American States had carried its burden under Rule 56(c) by pointing out that there was no evidence that the soil contamination was caused by a sudden and accidental pollution event. Because Labour would bear the ultimate burden of proving that the "sudden and accidental" exception to the pollution exclusion applies, the Court held that he had not met his burden under Rule 56(e) of opposing the motion for summary judgment with significant probative evidence tending to support his claim.

Therefore, the district court granted American States' motion for summary judgment.

After American States' motion for summary judgment was granted, Royal Insurance Company ("Royal"), another of Labour's insurers, filed a motion for summary judgment against Labour in the same action after American States filed its motion. Labour consented to entry of summary judgment by the district court because the issues in Royal's motion were identical to the motion of American States.

2. *The Court of Appeals*

After the district court granted the motions for summary judgment of American States and Royal, Labour filed an appeal with the Ninth Circuit Court of Appeals. In the appeal, the Ninth Circuit again considered the jurisdiction issue and concluded that the district court's exercise of discretion to accept jurisdiction was proper. As such, on the jurisdictional issue, the Court of Appeals held that dismissal of the declaratory relief claims would have resulted in piecemeal litigation because the breach of contract claims would still be pending before the district court. In addition, the Ninth Circuit stated that dismissal would frustrate the interests of judicial economy because the district court correctly decided the case on the merits.

Applying California law, the Ninth Circuit concurred with the district court's opinion that the three spill incidents in 1981, 1984 and 1985 did not involve soil contamination caused by an abrupt, unexpected and unintended discharge. The uncontroverted evidence in the record indicated that the spills were not unexpected, and that such spills occurred in the context of daily drippings and spills of toxic liquids onto the floor over many years. Consequently, the Ninth Circuit rejected Labour's effort to break down long-term business practices into temporal components in order to artificially attempt to trigger insurance coverage when the evidence unequivocally demonstrated that the spillage onto the floor occurred over a long period of time.

Therefore, the Ninth Circuit concluded that the district court properly entered summary judgment in favor of American States and Royal, and that Labour's proffered evidence of the three tank spills did not raise a triable issue

of fact regarding coverage under any American States or Royal policy. The district court judgment was affirmed pursuant to a memorandum opinion filed on October 25, 1996.

3. *The Petition for Rehearing*

On or about November 7, 1996, Labour filed a petition for rehearing setting forth issues essentially identical to the questions presented in Labour's petition for writ of certiorari.

By order filed on December 4, 1996, the Ninth Circuit denied the petition for rehearing.

4. *The Petition for Writ of Certiorari*

Labour filed his petition for a writ of certiorari with this Court on March 4, 1997.

REASONS WHY THE PETITION SHOULD BE DENIED

I. GRANTING CERTIORARI WOULD BE IMPROVIDENT UNDER RULE 10 OF THIS COURT WHERE THE ONLY ISSUE IS WHETHER THE COURT OF APPEALS CORRECTLY APPLIED STATE COMMON LAW IN ITS CONSIDERATION OF AN INSURANCE COVERAGE DISPUTE

Where certiorari has been granted, the rationale behind granting a writ of certiorari has been stated by this court as follows:

> "A principal purpose for which we use our certiorari jurisdiction, and the reason we grant certiorari in the present case, is to resolve conflicts among the United States Courts of Appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. U.S.*, 500 U.S. 344, 347, 111 S.Ct. 1854, 1857, 114 L.Ed.2d 385 (1991).

As set forth in Supreme Court Rule 10, there are only two reasons the court may consider in granting review under writ of certiorari which do not concern a federal question or federal law, and neither of these non-federal considerations governing review on certiorari are applicable to Labour's petition for writ of certiorari.

The first non-federal question issue concerns a situation where a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter. (Rule 10(a)). The second non-federal issue concerns a situation where a United States Court of Appeals has so far departed from the accepted usual course of judicial proceedings, or has sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory power. (Rule 10(a)).

The second issue under Rule 10(a) concerning the Court of Appeals' alleged departure from the accepted and usual course of judicial proceedings will be dealt with below. As to the first non-federal issue in Rule 10(a), Labour has made no attempt to argue that the Ninth Circuit entered a decision in conflict with a decision

of another United States Court of Appeals on the same issue. Instead, Labour expressly argues that the Ninth Circuit made erroneous factual findings and misapplied or failed to follow California substantive law on the "sudden and accidental" pollution exclusion. Labour Petition at 4.

The last part of Rule 10 reads as follows:

> "A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Even where an issue may seem to be important, where the question does not fall within the parameters of the Court's traditional discretion in granting review, the Court has "recognize[d] that by 'adher[ing] scrupulously to the customary limitations on our discretion' regardless of the significance of the underlying issue, 'we "promote respect . . . for the Court's adjudicatory process.'"" *Adams v. Robertson*, 117 S.Ct. 1028, 1032, n. 6 (1997), quoting *Illinois v. Gates*, 462 U.S. 213, 224, 103 S.Ct. 2317, 2325, 76 L.Ed.2d 527 (1983) (quoting *Mapp v. Ohio*, 367 U.S. 643, 677, 81 S.Ct. 1684, 1704, 6 L.Ed.2d 1081 (1961) (Harlan, J., dissenting))

II. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH ITS PRIOR DECISIONS INTERPRETING CALIFORNIA LAW AND HAS NEITHER DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS NOR SANCTIONED A DEPARTURE BY A LOWER COURT

Labour asks this Court to grant certiorari because the Court of Appeals allegedly entered a decision that conflicts with a decision of the California Supreme Court and also failed to afford Labour the benefit of all reasonable and logical inferences from the facts adduced under *United States v. Diebold, Inc.*, 369 U.S. 654, 82 S.Ct. 993 (1962). Consequently, according to Labour, because the courts below allegedly failed to follow established California law, the Court of Appeals has purportedly departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the district court as to call for the exercise of this court's supervisory power.

On a threshold level, Labour errs in his assertion that the California Supreme Court's decision in *Montrose v. Superior Court*, 6 Cal.4th 287 (1993) is a pollution exclusion case. Although the critical language cited by Labour appears similar to the language that might describe a court's analysis of the pollution exclusion, the *Montrose* court was analyzing the issue of whether the environmental contamination caused by Montrose's actions constituted an "occurrence" within the meaning of the comprehensive general liability policies at issue in that case.

There is no California Supreme Court authority which exists on the interpretation of the "sudden and accidental pollution exclusion."

As to Labour's contention that federal courts of appeal will follow state appellate court decisions absent compelling evidence that the state's supreme court would decide differently, that is exactly what the Ninth Circuit did in this case. A quick review of the district court and Ninth Circuit decisions will reveal that numerous appellate authorities exist in California to support the proposition that the "sudden and accidental pollution exclusion unambiguously bars coverage for long-term gradual pollution." *See, American States Ins. Co. v. Sacramento Plating, Inc.*, 861 F.Supp. 964, 970 (E.D. Cal. 1994), citing *Truck Ins. Exchange v. Pozzuoli*, 17 Cal.App.4th 856, 860, 21 Cal.Rptr.2d 650 (1993), *Shell Oil Co. v. Winterthur Swiss Ins. Co.*, 12 Cal.App.4th 715, 752-56, 15 Cal.Rptr.2d 815 (1993) and *ACL Technologies, Inc. v. Northbrook Property & Casualty Ins. Co.*, 17 Cal.App.4th 1773, 1787, 22 Cal.Rptr.2d 206 (1993).

The Ninth Circuit decision in this case is also consistent with prior decisions of the same court, particularly *Smith v. Hughes Aircraft Co.*, 22 F.3d 1432 (9th Cir. 1993).

Labour attempts to discredit *Smith v. Hughes* by making the creative but misleading argument that the proffered alleged sudden and accidental events in *Smith v. Hughes* were not entitled to be considered because they were "periodic episodes" as described in the district court decision. However, in the Ninth Circuit's decision, the

events are referred to as "certain 'sudden' polluting events . . ." 22 F.2d at 1438.

Consequently, Labour is missing the simple lesson of the case which stands for the proposition that an insured should not be allowed to artificially "break down its long-term waste practices into temporal components in order to find coverage where the evidence unequivocally demonstrates that the pollution was gradual." *Smith v. Hughes* at 1438.

Labor's assertion that the Ninth Circuit failed to afford him the benefit of all reasonable and logical inferences also misses the mark under the huge body of jurisprudence that has developed over recent years concerning the summary judgment burden under Rule 56 of the Federal Rules of Civil Procedure. Now, once the moving party has met its burden on a motion for summary judgment under the standard articulated by *Celotex v. Catrett*, 477 U.S. at 324, 106 S.Ct. 2548, 2553 (1986), in order to defeat a motion for summary judgment, the non-moving party who bears the burden of proof on a particular issue must affirmatively demonstrate a genuine issue of material fact by pointing out specific facts that, if proven at trial, would meet its burden of proof on that issue. If the opposing party presents only circumstantial evidence, inferences arising from that evidence must be sufficient to sustain a verdict at trial. If the inferences are insufficient to sustain a verdict based on circumstantial evidence, and no other evidence is presented, summary judgment is proper. *James v. Otis Elevator Co.*, 854 F.2d 429, 432, n. 3 (11th Cir. 1989). The non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio*

Corp., 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.E.2d 538 (1986). Under the *Celotex* standard, the non-moving party has the burden to go beyond the pleadings to designate "specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553.

The district court granted summary judgment, and the Ninth Circuit affirmed that judgment, because Labour's evidence was speculative and conjectural concerning the possible soil contamination caused by the three spill incidents. *American States Ins. Co. v. Sacramento Plating*, 861 F.Supp. 964, 972.

III. THE PETITION INVOLVES THE INTERPRETATION OF AN INSURANCE CONTRACT UNDER STATE LAW AND THUS DOES NOT PRESENT A SIGNIFICANT ISSUE OF PUBLIC POLICY WHICH WOULD JUSTIFY GRANTING CERTIORARI

In recent years, numerous litigants have sought review by this Court of state common law insurance coverage cases. The court has uniformly denied certiorari.[1/]

[1/] *See, e.g., Tonka Corp. v. Bituminous Casualty Corp.*, 9 F.3d 51 (8th Cir. 1993), *cert. denied*, 114 S. Ct. 1834 (1994); *Hartford Accident & Indem Co. v. United States Fidelity & Guar. Co.*, 962 F.2d 1484 (10th Cir.), *cert. denied*, 113 S. Ct. 411 (1992); *Broderick Inv. Co. v. Hartford Accident & Indem. Co.*, 954 F.2d 601 (10th Cir.), *cert. denied*, 113 S. Ct. 189 (1992); *Lumbermens Mut. Casualty Co. v. Bellville Indus., Inc.*, 938 F.2d 1423 (1st Cir. 1991), *cert. denied*, 112 S. Ct. 969

Nonetheless, Labour asks this court to examine a substantive state law determination on quasi public policy grounds.

At page 2 of his petition, Labour cites to the Fifth Amendment of the United States Constitution as a "constitutional provision involved" in this case. However, Labour never raised the due process issue to the courts below and has not even incorporated or referenced due process in any one of the three issues he has presented to the Court for its consideration. The parties are required to present federal issues to the courts below in order to preserve the issue for the Court's consideration. For example, where a litigant fails to present a federal issue to the state court of last resort prior to filing a petition for writ of certiorari, that litigant will be precluded from arguing the federal issue before the Supreme Court. *Webb v. Webb,* 451 U.S. 493, 496-497, 501, 101 S.Ct. 1889, 1891-1892, 1894, 68 L.Ed.2d 392 (1981). Requiring parties to raise

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(1992); *FL Aerospace v. Aetna Casualty & Sur. Co.,* 897 F.2d 214 (6th Cir.), *cert. denied,* 498 U.S. 911 (1990); *Continental Ins. Co. v. Northeastern Pharmaceutical & Chem. Co.,* 842 F.2d 977 (8th Cir.), *cert. denied,* 488 U.S. 821 (1988); *Maryland Casualty Co. v. Armco Inc.,* 822 F.2d 1348 (4th Cir. 1987), *cert. denied,* 484 U.S. 1008 (1988); *Borden, Inc. v. Affiliated Ins. Co.,* 682 F.Supp. 927 (S.D. Ohio 1987), *aff'd,* 865 F.2d 1267 (6th Cir.), *cert. denied,* 493 U.S. 817 (1989); *Keene Corp. v. Insurance Co. of N. Am.,* 667 F.2d 1034 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 1007 (1982); *Insurance Co. of N. Am. v. Forty-Eight Insulations,* 633 F.2d 1212 (6th Cir. 1980), *cert. denied,* 454 U.S. 1109 (1981); *Hybud Equip. Corp. v. Sphere Drake Ins. Co., Ltd.,* 64 Ohio St. 3d 657, 597 N.E.2d 1096 (1992), *cert. denied,* 113 S. Ct. 1585 (1993); *City of Edgerton v. General Casualty Co.,* 184 Wis.2d 750, 517 N.W.2d 463 (1994), *cert. denied,* 115 S.Ct. 1360 (1995).

issues below not only avoids unnecessary adjudication in the Supreme Court by allowing state courts to resolve issues on state law grounds, but also assists the court in its "deliberations by promoting the creation of an adequate factual and legal record." *Adams v. Robertson,* 117 S.Ct. 1028, 1031 (1997). Thus, it would be improvident to grant the petition for certiorari on due process grounds, to the extent that a simple breach of contract could ever constitute a due process violation. *Schlake v. Beatrice Production Credit Ass'n,* 596 F.2d 278, 281 (8th Cir. 1979); *Medina Jimenez v. Almodovar,* 650 F.2d 363, 370 (1st Cir. 1981) ("[A] mere breach of a contractual right is not a deprivation of property without *constitutional* due process of law."); *Bishop v. Wood,* 426 U.S. 341, 349-50, 96 S.Ct. 2074, 2079-80, 48 L.Ed.2d 684 (1976).

Labour has made other quasi-public policy arguments concerning the impact that this case may have on other insureds. However, because each insurance coverage dispute is peculiar to its insureds, the policy at issue, the facts of the particular claim, and the application of state law to the policy language and claim facts, the Court would have to wildly speculate to determine how the decision will affect other insureds.

Even where an underlying issue is of significance or of great practical importance to a petitioner, where the issue does not fit within the customary limitations on the court's discretion, the court will ordinarily not consider significance or importance alone as a "sufficient reason" for granting certiorari. *Ticor Title Ins. Co. v. Brown,* 511 U.S. 117, 114 S.Ct. 1359, 1362, 128 L.Ed.2d 33 (1994).

Ironically, public policy actually supports the reasoning of the Court of Appeals which, in imposing upon the insured the burden of proving a claim is covered under the "sudden and accidental" exception to the pollution exclusion, consistent with its prior holding in *Aeroquip Corp. v. Aetna Casualty & Surety Co., Inc.*, 26 F.3d 893, 894-95 (9th Cir. 1994), articulated a clear sensible approach to determining whether a comprehensive general liability policy affords coverage for a pollution claim.

A number of public policy reasons support the "majority of decisions [which] place the burden on the insured" to prove the exception. *Aeroquip*, 26 F.3d at 894; *Interex Corp. v. Atlantic Mutual Ins. Co.* (D.Mass. 1995) 874 F.Supp. 1406, 1416 ("[T]he majority of state courts now place the burden on the insured as to the 'sudden and accidental' exception from the pollution exclusion.") First, as noted by the Ninth Circuit in *Aeroquip*, applying California law, "if the burden were on the insurer, the property owner would have an incentive to avoid finding out whether pollutants are being gradually discharged because preservation of ignorance would increase the likelihood of insurance coverage." (at 895)

Second, as noted by the United States District Court for the Western District of Michigan, "[p]lacing the burden on the insurer of proving that the exception to the exclusion does not apply, would in effect force the insurer to monitor the insureds' activities . . . to protect itself from liability. This allocation of the burden by the Court would in effect rewrite the contractual relationship between the parties." *Upjohn Co. v. Aetna Casualty & Surety Co.* (W.D. Mich. 1993) 850 F.Supp. 1342, 1346.

Third, because application of the sudden and accidental exception is typically "dependent upon evidence that an unusual event occurred during the course of [the insured's] operations—evidence that [the insured] is more likely to possess or have access to—fairness dictates that [the insured] be made to bear the burden of proof." *Harrow Products, Inc. v. Liberty Mutual Ins. Co.* (W.D. Mich. 1993) 833 F.Supp. 1239, 1244, *aff'd.* in part (6th Cir. 1995) 64 F.3d 1015, 1020 (". . . [I]t would be strange to force a party to prove a negative, that the spills were *not* all sudden and accidental. This is particularly true where the [insured] is the party most likely to have the relevant information about its operations.")

Therefore, the Ninth Circuit's reasoning and analysis concerning the pollution exclusion is actually supportive of public policy and is not contrary to such concerns. Thus, not only does this case concern the interpretation of an insurance contract under state law, but the decision of the Court of Appeals advances public policy concerns.

CONCLUSION

As set forth above, the petition for writ of certiorari should be denied for three reasons:

(1) Because granting certiorari would be improvident under Supreme Court Rule 10 where the only issue is whether the Court of Appeals correctly applied state common law;

(2) Because the decision of the Court of Appeals is consistent with its prior decisions interpreting California law and has neither departed from the accepted and usual course of judicial proceedings nor sanctioned a departure from a lower court; and

(3) Because the petition involves the interpretation of an insurance contract under state law and thus does not present a significant issue of public policy which would justify granting certiorari.

Therefore, for all of the reasons set forth above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

APPENDIX

RELEVANT STATUTORY PROVISIONS INVOLVED

Supreme Court Rule 10:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled

> by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.